

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Sid Miller, et al.,

Plaintiffs,

v.

Tom Vilsack, in his official capacity as
Secretary of Agriculture,

Defendant.

Case No. 4:21-cv-00595-O

RESPONSE TO DEFENDANTS' NOTICE OF JULY 2, 2021

The legality of the defendants' proposed "preparatory steps" depends on whether those anticipatory actions involve racially discriminatory conduct by government officials, which is flatly prohibited by Title VI and the equal-protection component of the Fifth Amendment. The Court's preliminary-injunction order of July 1, 2021, reflects this principle, as it prohibits the defendants "from discriminating on account of race or ethnicity in administering section 1005 of the American Rescue Plan Act" with respect to the class members. *See* Order (ECF No. 60) at 24. The Court's order is not concerned with whether the defendants are forgiving a loan, as opposed to taking mere "preparatory steps" in that direction. It is concerned with whether the defendants are discriminating against the class members on account of their race or ethnicity.

It is possible to imagine preparatory steps to implement section 1005 that will not involve racially discriminatory conduct by government officials. For example, we would not object if the defendants wanted to post material on a USDA website that truthfully describes the content of section 1005 and the fact that it is currently enjoined from enforcement. Nor would we object if the USDA attempts to research or

determine the racial composition of farmers or ranchers so it can act quickly to implement section 1005's command in the event that all three preliminary injunctions are vacated on appeal. But when it comes to "sending letters to eligible borrowers,"¹ the government is using racial criteria to determine who will receive the letter and its invitation to begin preparing for possible loan forgiveness, and that is not (in the plaintiffs' view) consistent with law or the Court's preliminary-injunction order.

Respectfully submitted.

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1. See Notice (ECF No. 61) at 2.

CERTIFICATE OF SERVICE

I certify that on July 5, 2021, I served this document through CM/ECF upon:

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